(2)

No. 86-1413

In The
Supreme Court of the United States
October Term, 1986

JOHN STOREY, et al.,

Petitioners,

versus

THE STATE OF GEORGIA,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

MICHAEL J. BOWERS
Attorney General

MARION O. GORDON
First Assistant
Attorney General

DARYL A. ROBINSON*
Senior Assistant
Attorney General

JENNIFER L. HACKEMEYER
Assistant Attorney General

**Counsel of Record*

Please Serve:

DARYL A. ROBINSON
132 State Judicial Building
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 656-3353

April 3, 1987

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTION PRESENTED FOR REVIEW

Section 50-16-14 of the Official Code of Georgia authorizes security personnel to remove any person from any property or building of the State when the person's activities interfere with or disrupt the normal activities and operations carried on in such premises. Section 50-16-16 of the Official Code of Georgia provides that any person who refuses to vacate such property upon request shall be guilty of a misdemeanor.

The question presented is whether this legislative scheme violates the First Amendment's guarantees of freedom of speech and the rights of all persons to assemble peaceably and petition the government for redress of grievances.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

No. 86-1413

In The

Supreme Court of the United States

October Term, 1986

JOHN STOREY, et al.,

Petitioners,

versus

THE STATE OF GEORGIA,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

I. CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision which Petitioners contend is applicable to the instant action is the First Amendment to the United States Constitution.

II. REASONS WHY THE WRIT SHOULD NOT BE GRANTED

A. The record is insufficient to permit a full review on the merits.

This case presents a sparse record for the Court to review. There is no transcript of the hearing on the motion to dismiss the accusations. There was no evidentiary

hearing or trial. The record contains no testimony by any witness concerning the events of February 29, 1985, in the gallery of the Georgia House of Representatives. Because the record is meager, Respondent respectfully submits that full review on the merits would be hampered substantially. This Court may therefore appropriately deny the Petition for Writ of Certiorari.

B. The Georgia Court of Appeals correctly held that O.C.G.A. § 50-16-14 does not violate the First Amendment.

The constitutional command of free speech and assembly is basic and fundamental and encompasses peaceful social protests, but does not mean everyone with opinions or beliefs to express may do so at any time and at any place. *Cox v. Louisiana,* 379 U.S. 559, 574 (1965); *United States v. Grace,* 461 U.S. 171, 177-178 (1983). In public forums, the government's ability to restrict expressive conduct is very limited: government may enforce reasonable time, place, and manner regulations as long as restrictions are content-neutral, are narrowly tailored to serve significant governmental interests, and leave open ample alternative channels of communication. *United States v. Grace,* 461 U.S. 171, 177 (1983).

Assuming, *arguendo,* that the gallery of the Georgia House of Representatives is a "public forum," Respondent submits that its legislative scheme satisfies this test of reasonableness. The statute, O.C.G.A. § 50-16-14, is content-neutral. It does not bar expression of unpopular views, while permitting expression of more commonly held views. Second, the statute is narrowly drawn. It requires that a person's activities are intended to disrupt or inter-

fere with the normal activities and functions of the State's property or building. This requirement of intent narrows the scope of the statute. *See generally, Adderley v. Florida,* 385 U.S. 39, 42-43 (1966). In addition, the statute serves significant governmental interests. In *Cox v. Louisiana,* 379 U.S. 595 (1965), the Court held that a State's statute which prohibited picketing or parading in or near a courthouse with the intent of influencing the administration of justice did not infringe upon the constitutionally protected rights of free speech and assembly. The Court recognized that a State has a significant interest in protecting the judicial process from being misjudged in the minds of the public. *Cox v. Louisiana,* 379 U.S. 559, 565 (1965). Similarly, Respondent submits that it has a significant interest in extending the same protection to preserve the integrity of the legislative process. The State of Georgia has a significant interest in protecting the legislative process from being misjudged in the minds of the public. The State also has a significant interest in insuring that the business of the State, as conducted in its buildings and on its property, is conducted in an orderly and decorous fashion.

This does not mean, however, that O.C.G.A. § 50-16-14 bans all protests. Indeed, this case does not deal with free speech alone, but with expression mixed with particular conduct. "[I]t has never been deemed an abridgement of freedom of speech . . . to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed." *Giboney v. Empire Storage & Ice Co.,* 336 U.S. 490, 502 (1949). Many alternative channels of communication were available to the Petitioners.

For example, they were free to lobby peacefully their elected representatives in the hallways of the State Capitol. They were free to write to the membership of the State legislature and voice their concerns. The statute in question only prohibits conduct intended to disrupt or interfere with the normal operations of the Georgia House of Representatives or other State property or buildings.

Petitioners rely heavily on the "strikingly similar" statute involved in the case of *United States v. Grace*, 461 U.S. 171 (1983), for the proposition that Georgia's statute should be struck down. However, the Court in *Grace* expressly recognized that there was no suggestion that the activities of the protesters in any way interfered with the orderly administration of the building or other parts of the Supreme Court grounds. *Id.* at 182. In light of this recognition and the foregoing reasoning, Respondent submits that O.C.G.A. § 50-16-14 is a reasonable time, place, and manner restriction on expressive conduct.

While the gallery of the Georgia House of Representatives is generally open to the public, it is not a public forum historically associated with free expression of expressive activities. "No one, for example, would suggest that the Senate gallery is a proper place for a vociferous protest rally." *Adderley v. Florida*, 385 U.S. 39, 54 (1966) (Douglas, Brennan, and Fortas, J., dissenting). Respondent respectfully submits that the gallery of the Georgia House of Representatives is not a "public forum."

Public property which is not by tradition or designation a forum for public communication is governed by different standards from those discussed previously. *Perry Ed. Assn. v. Perry Local Ed. Assn.*, 460 U.S. 37, 46 (1983).

In addition to time, place, and manner regulations, the State may reserve such an area for its intended purposes, as long as the regulation on speech is reasonable and not an effort to suppress unpopular views. *Id.* at 46. As set forth above, Georgia's legislative scheme is content-neutral. Moreover, the statute is reasonable because it seeks only to regulate conduct which is intended to disrupt or interfere with the normal operation or business of state government, when carried on in state property. In this case Petitioners were arrested only after they interrupted the normal activities of the Georgia House of Representatives by boisterous yelling. The arrest of Petitioners was a reasonable response by the State in its efforts to preserve the legislative forum for its dedicated function. The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. *Perry Ed. Assn. v. Perry Local Ed. Assn.*, 460 U.S. 37, 46 (1983); *United States Postal Service v. Council of Greenburgh Civic Assns.*, 453 U.S. 114, 129-130 (1981); *Greer v. Spock*, 424 U.S. 828, 836 (1976); *Adderley v. Florida*, 385 U.S. 39, 48 (1966).

———o———

CONCLUSION

For the above and foregoing reasons, it is respectfully urged that Petitioners' rights under the First Amendment have not been violated, that the record is insufficient to permit full review on the merits, and that the Petition for Writ of Certiorari should accordingly be denied.

Respectfully submitted,

MICHAEL J. BOWERS 071650
Attorney General

MARION O. GORDON 302300
First Assistant Attorney General

/s/ DARYL A. ROBINSON 610012
Senior Assistant Attorney General

/s/ JENNIFER L. HACKEMEYER 316445
Assistant Attorney General

Please Serve:

DARYL A. ROBINSON
Senior Assistant Attorney General
132 State Judicial Building
Atlanta, Georgia 30334
(404) 656-3353